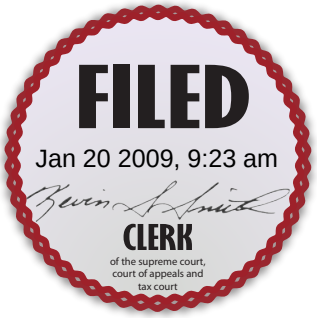

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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY D. SHREVE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A05-0809-CR-561
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0603-FB-525

January 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Following a plea of guilty, Anthony D. Shreve appeals his seventy-month sentence for Class D felony criminal confinement and Class D felony sexual battery. Specifically, he contends that the trial court abused its discretion in sentencing him and that his sentence is inappropriate. Finding neither an abuse of discretion nor that Shreve has persuaded us that his sentence is inappropriate, we affirm.

Facts and Procedural History

In March 2006, the State charged Shreve with Class B felony rape and Class D felony criminal confinement. In March 2007, the State amended the charging information to add Class D felony sexual battery. On July 16, 2007, Shreve and the State entered into a plea agreement whereby Shreve agreed to plead guilty to Class D felony criminal confinement and Class D felony sexual battery, and the State agreed to dismiss the rape charge and not to pursue charges relating to three other investigations involving Shreve.

According to the factual basis presented by the State, on November 14, 2005, Shreve used force to confine R.B. by pulling her hands down and holding her when she struggled to get up. In addition, Shreve, with the intent to arouse his sexual desires, touched his penis to R.B.'s vagina while forcefully holding her down.

At Shreve's sentencing hearing, the trial court made the following statement:

> Well one of the first things the Court looks at obviously is criminal record. Mr. Shreve has as I can tell seven misdemeanor convictions and ten separate felony convictions. The offenses range from speed contest as a B misdemeanor, which usually you've got to be driving pretty badly to get a misdemeanor out of a speed contest I believe. Felony theft, which was in here in which Mr. Shreve was so disgusted with what the Court told him, he

> flipped the counsel table upside down and was found in contempt so that was the first time this Court had the personal opportunity to be in Mr. Shreve's presence and he just . . . had an absolute disdain for the Court's authority at that time. Then he has a resisting law enforcement in [1999], which shows an absolute[] disdain for the authority of police officers. Then in [2002], he has six separate offenses as D felonies, intimidation, false informing, intimidation, false informing, intimidation, false informing. Which means he lies and he tries to threaten people. Then in [2002] in September, intimidation conviction. Threatened physical harm to a correctional officer in Shelby County Jail. Again, while he's incarcerated, has no respect for authority whatsoever. Disorderly conduct in . . . Decatur County. Failure to stop, disregard for authority. Disorderly conduct. Driving While Suspended. Disregard for the authority of the State. Then the criminal charges in this event. So then while in jail we got a report that indicates that Mr. Shreve basically threatens people, refuses to comply with rules. So Mr. Shreve, you're a person who seems to think you get your way behaving that way. That's not gonna work all the time. Apparently works sometimes or you probably wouldn't do it. Based upon that I think there are significant aggravating factors, your record, your behavior, your absolute disdain for authority. And so I think you are a dangerous person. So I'm not sure that you're the worst of the worst, which is what the Court of Appeals does[1] and I don't want to do this case over again so I'm gonna give you thirty-five months on each case, which is two months short of the maximum sentence. Order that executed. . . .
>
> Oh yes. Yeah the two sentences are to be run consecutively to each other because they were separate acts. The mitigation potential for plea is negated by the significant bargain that the defendant received by pleading guilty to the lesser offenses. And then the Court considers the defendant has a fairly young age, but that's more than set off by his continued negative behavior. His record would be longer if he were simply older I believe. And probably will be.

Tr. p. 33-35. Shreve now appeals his sentence.

Discussion and Decision

Shreve first contends, within the same argument, that his sentence is both inappropriate and an abuse of discretion. He then contends that the trial court "abused its

[1] *See Cardwell v. State*, 895 N.E.2d 1219, 1224-25 (Ind. 2008) (discussing how appellate courts have approached reviewing and revising sentences).

discretion when it failed to give certain mitigating facts their proper weight and considerations." Appellant's Br. p. 7 (capitalization and emphasis omitted).

Regarding Shreve's first argument, as this Court recently clarified in *King v. State*, 894 N.E.2d 265 (Ind. Ct. App. 2008), inappropriate sentence and abuse of discretion claims are to be analyzed separately. *Id.* at 267 (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). We therefore give Shreve the benefit of the doubt and separate his claims below. As for Shreve's second argument that the trial court abused its discretion by failing to give his guilty plea sufficient mitigating weight, we note that "[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." *Cardwell v. State*, 895 N.E.2d 1219, 1223 (Ind. 2008). This argument is therefore unavailable for review. To the extent that Shreve argues that the trial court abused its discretion by failing to consider his guilty plea as a mitigator, we address that argument below.

I. Abuse of Discretion

Shreve contends that the trial court abused its discretion in failing to find two mitigators. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer*, 868 N.E.2d at 490. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* One way in which a court may abuse its discretion is by entering a sentencing statement that omits mitigating circumstances that are clearly

supported by the record and advanced for consideration. *Id.* at 490-91. However, a trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000).

Shreve first argues that the trial court failed to consider his guilty plea as a mitigating circumstance.[2] A defendant who pleads guilty generally deserves "some" mitigating weight to be afforded to the plea. *Anglemyer*, 875 N.E.2d at 220 (citing *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007)). However, our Supreme Court has recognized that a trial court does not necessarily abuse its discretion by failing to recognize a defendant's guilty plea as a significant mitigating circumstance. *Id.* at 221. Instead, a trial court is only required to identify mitigating circumstances that are both significant and supported by the record, and "a guilty plea may not be significantly mitigating when . . . *the defendant receives a substantial benefit in return for the plea*." *Id.* (emphasis added) (citing *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999)).

Here, the trial court *did* find that Shreve's guilty plea was a mitigator but ultimately concluded that its weight was offset "by the significant bargain that the defendant received by pleading guilty to the lesser offenses." Tr. p. 35. Specifically, the State dismissed the Class B felony rape charge and agreed not to pursue additional charges arising out of its other investigations. Because the trial court found Shreve's guilty plea to be mitigating but found that it was not significantly mitigating, it did not abuse its discretion.

[2] In support of this argument, Shreve extensively quotes the trial court at the sentencing hearing, citing Tr. p. 58-59 and Appellant's App. p. 86-87. The citation to these pages baffles us because the transcript provided to us only goes to page 35 and the Appellant's Appendix only goes to page 83. Moreover, our review of the sentencing hearing transcript does not reveal the quotations to which Shreve cites.

Shreve next argues that the trial court failed to consider as a mitigator that he was on electronic monitoring for 204 days before this case was resolved, "which is an indication that incarceration was not necessary to protect the interest of the State of Indiana." Appellant's Br. p. 7. However, Shreve's history on pre-trial electronic monitoring was not favorable to him. The PSI reveals that Shreve was released to pre-trial monitoring on May 16, 2006, but had difficulty maintaining employment, paying his fees, and staying in range. Moreover, the PSI contains an allegation that Shreve committed another sexual crime while on pre-trial monitoring. The trial court did not abuse its discretion in failing to identify this as a mitigator.

II. Inappropriate Sentence

Shreve next contends that his sentence is inappropriate. Though Shreve does not provide an analysis for this issue and at one point even invokes the outdated standard "manifestly unreasonable," he does cite Indiana Appellate Rule 7(B). We therefore proceed to address this issue. We may revise a sentence if it is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). The defendant bears the burden of persuading us his sentence is inappropriate. *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offenses, the factual basis for Class D felony criminal confinement and Class D felony sexual battery does not provide much specificity other than Shreve confined and sexually battered R.B., a ten-year female friend of his. As for Shreve's character, however, the record is replete with evidence of its reprehensibility.

As detailed by the trial court, Shreve, who was a mere twenty-five years old at the time of these crimes, had seven misdemeanor and ten felony convictions, many of which involve disrespect for the authority of the State. Specifically, Shreve had toppled a table while in court, resisted police officers, and threatened harm to correctional officers. And while in jail awaiting trial for these crimes, Shreve was reported to have threatened people and disobeyed rules. As the trial court said, Shreve is "a dangerous person." Shreve has failed to persuade us that his seventy-month sentence is inappropriate.

Affirmed.

RILEY, J., and DARDEN, J., concur.